

## **TENTATIVE RULINGS for CIVIL LAW and MOTION**

### **May 21, 2009**

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at [www.yolo.courts.ca.gov](http://www.yolo.courts.ca.gov). If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6942

#### **TENTATIVE RULING**

**Case:** **Medina v. Sutter Health Sacramento Sierra Region**  
**Case No. CV PO 08-274**

**Hearing Date:** **May 21, 2009** **Department Fifteen** **9:00 a.m.**

Defendant Susan Maayah M.D.'s motion for summary judgment is **GRANTED**. (Code Civ. Proc., § 437c, subds. (c) & (p)(2); Separate Statement of Undisputed Material Facts 1-5.) All the papers submitted show that there is no triable issue as to any material fact and that defendant is entitled to judgment as a matter of law. Plaintiff also failed to file a separate statement. (Code Civ. Proc., § 437c, subd. (b)(3).)

Defendant Annette E. Fineberg, M.D.'s motion for summary judgment is **DENIED**. (Code Civ. Proc., § 437c.; Evid. Code, § 801; *Jennings v. Palomar Pomerado Health Systems, Inc.* (2003) 114 Cal.App.4<sup>th</sup> 1108, 1117-1119; Separate Statement of Undisputed Material Facts, No. 7; Dec. of Dr. Gilbert.) The Court finds that the opinion of defendant's expert was unsupported by reasons or explanations that established the absence of a material fact issue for trial, as required for summary judgment.

Defendant Annette E. Fineberg, M.D.'s and Susan Maayah, M.D.'s objections to the Declaration of Dr. Richardson are **GRANTED**. (Evid. Code, § 801; *Jennings v. Palomar Pomerado Health Systems, Inc.* (2003) 114 Cal.App.4<sup>th</sup> 1108, 1117-1119.) The Court finds that the opinion of defendant's expert was unsupported by adequate reasons or explanations.

If no hearing is requested, this tentative ruling is effective immediately. Defendants are directed to prepare a formal order consistent with this ruling and in accordance with Code of Civil Procedure section 437c, subdivision (g) and California Rules of Court, rule 3.1312.

## TENTATIVE RULING

**Case:** **Nguyen v. Regents of the University of California**  
**Case No. CV CV 08-1332**

**Hearing Date:** **May 21, 2009** **Department Fifteen** **9:00 a.m.**

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The Court finds that additional briefing is required to help it resolve the issues before it. The parties are directed to file and serve briefs, not to exceed 15 pages in length, addressing the following issues only.

1) Defendants rely on *Gupta v. Stanford Univ.* (2004) 124 Cal.App.4<sup>th</sup> 407 and *Gutkin v. Univ. of Southern Cal.* (2002) 101 Cal.App.4<sup>th</sup> 967 in support of their motion. In both cases, the appellate courts specifically note that the university's charter/handbook required an evidentiary hearing. (*Gupta, supra*, at 194; *Gutkin, supra*, at 971.) The parties shall address

(a) whether any governing document (i.e., bylaw, regulation, handbook, manual or other document) or law required an evidentiary hearing to be held in relation to the plaintiff's allegations or complaints. If a governing document required an evidentiary hearing, the defendants must highlight the relevant portions of such document(s);

(b) whether the "meeting" required in section 4.22525 of the School of Medicine Bylaws and Regulations is an evidentiary hearing or has been interpreted to require an evidentiary hearing; and

(c) whether the doctrine of exhaustion of judicial remedies or collateral estoppel applies if no governing document or law required an evidentiary hearing to be held in relation to the plaintiff's complaints.

2) Defendants contend that the doctrine of exhaustion of judicial remedies applies even if the plaintiff was not afforded an evidentiary hearing. Plaintiff shall respond to this argument, with citation to relevant authority.

3) The parties shall identify each allegation in the first amended complaint that the plaintiff did not raise in a grievance, complaint, or proceeding before the University (including any committee, official or investigator of the University) before the instant lawsuit was filed.

4) Of those allegations the plaintiff raised in a grievance, complaint, or proceeding before the University (including any committee, official or investigator of the University), the parties shall identify each allegation or complaint that the University did not decide.

5) Identify the final orders or decisions that resulted from the investigations described in Exhibits T, Y and Z to the defendants' request for judicial notice. Did the University adopt the investigators' findings in the above-listed exhibits? If so, present evidence showing the final orders or decisions made by the University based on these investigations and how the plaintiff was notified of the University's final orders or decisions.

6) Present evidence showing how the plaintiff was notified of the final decision or order on her appeal of the dismissal decision.

7) Was the University required to notify the plaintiff of her right to challenge a final decision or order? What must any required advisement state?

8) The plaintiff contends that the doctrine of exhaustion of judicial remedies cannot apply where testimony under oath is not required, witnesses are not subject to cross-examination, there is no record of the proceedings, the student is not permitted to have counsel present, and no “argument” is allowed. No legal authority was cited in support of the plaintiff’s contention. The plaintiff must cite legal authority in support of her argument. Defendants are invited to respond to the plaintiff’s contention.

Supplemental opening briefs addressing the above issues shall be filed and served by no later than June 8, 2009. Each party may file a brief responding to the other party’s supplemental opening brief by no later than June 18, 2009. **All legal contentions must be supported by citation to authority.** The Court will not consider late-filed papers.

This matter is continued to July 2, 2009, at 9:00 a.m. in Department Fifteen.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

#### **TENTATIVE RULING**

**Case:** **Northern California Collection Service, Inc. of Sacramento v.  
Thomas Heath Construction Company, Inc.  
Case No. CV G 08-2292**

**Hearing Date:** **May 21, 2009** **Department Fifteen** **9:00 a.m.**

Thomas Heath Construction Company, Inc.’s unopposed motion to set aside the entry of default and default judgment against it is **GRANTED**. (Code Civ. Proc., § 473, subd. (b).) Defendant was led to believe that the plaintiff would not pursue the complaint. (Harris Declaration ¶¶ 5-6.) Neither Thomas Heath nor David Harris received notice of the request for entry of default/default judgment. (Harris Declaration ¶ 5; Heath Declaration ¶ 6.) Additionally, the service of the summons and complaint on Thomas Heath Construction Company, Inc. does not comply with Code of Civil Procedure section 415.20. The proof of service filed on February 10, 2009, shows that the process server had the office address for the corporation’s agent for service of process, Thomas Heath. It appears that plaintiff’s counsel also had this address because the Abstract of Judgment counsel later submitted shows 520 Laguna Street #B as the address for the corporation. The declaration of diligence does not state why the process server did not serve Mr. Heath at his office address. Because Mr. Heath’s office address was known, service should not have been accomplished at another address. (Code Civ. Proc., § 415.20.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

### TENTATIVE RULING

**Case:** Robinson v. Throne  
Case No. CV CV 09-191  
**Hearing Date:** May 21, 2009 Department Fifteen 9:00 a.m.

Plaintiff's unopposed motion to strike defendant's answer is **DENIED**. (Code Civ. Proc., §§ 431.10, 435 and 436; *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) Courts have permitted allegations which obviously included conclusions of law and have termed them ultimate facts or conclusions of fact. (*Perkins, supra*, at 6.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

### TENTATIVE RULING

**Case:** Ryan v. Levine  
Case No. CV CV 08-1696  
**Hearing Date:** May 21, 2009 Department Fifteen 9:00 a.m.

**Pro hac vice applications by Howard Close, Andrew Cook, Joseph Love, and Patrick McAndrew:** The unopposed applications are **GRANTED**. (Cal. Rules of Court, rule 9.40.)

**John Rakitan, Gershon Wolfe, and Advanced Ideas in Medicine, LLC's demurrer to the first amended complaint:** The request for judicial notice is **GRANTED**. (Evid. Code, § 452, subd. (d); *Aquila, Inc. v. Superior Court of San Diego County* (2007) 148 Cal.App.4th 556.) The Court does not take notice of the truth of the matters stated in Exhibit B to the request for judicial notice.

The demurrer on the ground that the tort causes of action against the demurring defendants are time-barred is **OVERRULED**. It is not evident from the face of the first amended complaint that the tort causes of action against the demurring defendants are time-barred. Plaintiff alleges sufficient facts to justify the delayed accrual of the limitations period. Based on the above, it is not necessary for the Court to rule on the plaintiff's claim of equitable tolling.

The demurrer on the ground that the Proprietary Information and Inventions Agreement is void is **OVERRULED**. The prefatory statement of the proprietary information section of the agreement states that "proprietary information" is information obtained, produced, made known or discovered *during* the employee's employment with the company. It is not clear from the face of the first amended complaint and the exhibits thereto that the Proprietary Information and Inventions Agreement would preclude an employee from using his/her most basic skills, general concepts, or know how. The face of the amended complaint does not show that the company treated or treats basic skills, general concepts or know how as confidential.

The demurrer to the ninth cause of action is **OVERRULED**. Plaintiff alleges that Sol Levine was a member of the board of directors for Large Scale Biology Corporation ("LSBC"). (First

Amended Complaint (“FAC”) ¶ 14.) The sixth and ninth causes of action are based on Mr. Levine’s position as a LSBC director. (FAC ¶¶ 66-68 and 82-85.) As a director of LSBC, Mr. Levine owed it a fiduciary duty. (Corp. Code, § 309, subd. (a); *Remillard Brick Co. v. Remillard-Dandini Co.* (1952) 109 Cal.App.2d 405.)

The demurrer to the third cause of action is **SUSTAINED WITH LEAVE TO AMEND**. The first amended complaint does not allege facts showing the existence of a joint venture relationship between Mr. Levine and the plaintiff. (*Cf. James v. Herbert* (1957) 149 Cal.App.2d 741.) The amended complaint does not allege facts showing the existence of a fiduciary relationship between Mr. Levine and the plaintiff. (*Richelle L. v. Roman Catholic Archbishop* (2003) 106 Cal.App.4th 257, 270-272.) For example, the amended complaint does not allege that the parties did not deal on equal terms and that Mr. Levine occupied a superior position to the plaintiff in LSBC.

The parties must comply with California Rules of Court, rule 3.1320(a) by specifying each cause of action to which each ground of the demurrer applies. In the future, the Court will not consider a demurrer that fails to comply with this court rule.

Plaintiff shall file an amended pleading by no later than June 5, 2009.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.